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8 **UNITED STATES BANKRUPTCY COURT**
9 **DISTRICT OF NEVADA**

10 In re:

11 **DESERT OASIS APARTMENTS, LLC,**

12 Debtor.

Case No. BK-S-11-17208-BAM

Chapter 11

13 **REPLY TO WELLS FARGO BANK'S**
14 **OBJECTION TO DESERT OASIS**
15 **APARTMENTS, LLC'S DISCLOSURE**
16 **STATEMENT**

Hearing Date: August 23, 2011

Hearing Time: 10:00 a.m.

17 DESERT OASIS APARTMENTS, LLC, the debtor and debtor-in-possession ("Debtor") in
18 the above-captioned chapter 11 case, by and through undersigned counsel, hereby files this reply
19 to Wells Fargo Bank's Objection to Desert Oasis Apartments, LLC's Disclosure Statement (the
20 "Opposition").

21 The Lender's Opposition contains two parts:

- 22 1. The Disclosure Statement does not contain adequate information for creditors to make
23 a decision whether to accept or reject the Plan; and
24 2. The Plan is not confirmable.

25 Both allegations are untrue.

26 Based on the Bank's arguments and current financial data, the Debtor has filed an
27 Amended Plan and a Disclosure Statement to the Amended Plan. A red-lined copy of the
28 Amended Plan is attached as Exhibit "1" and a red-lined copy the Disclosure Statement to the

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1 Amended Plan is attached as Exhibit "2". The proposed exhibit to the Disclosure Statement
 2 showing the Debtor's Cash Flow History and Projections is attached as Exhibit "3". A revised
 3 proposed Order approving the Disclosure Statement is attached as Exhibit "4".

4 1. The Disclosure Statement is Adequate

5 Adequate information is "a flexible concept that permits the degree of disclosure to be
 6 tailored to the particular situation." *Official Committee of Unsecured Creditors v. Michelson (In re*
 7 *Michelson)*, 141 B.R. 715, 718-19 (Bankr. E.D. Cal. 1992). However, at an "irreducible
 8 minimum," a disclosure statement must provide information about the plan and how its provisions
 9 will be effected. *Id.* What is adequate is a subjective determination to be made on a case-by-case
 10 basis. *In re Brothy*, 303 B.R. at 193 (quoting *In re Tex. Extrusion Corp.*, 844 F.2d 1142, 1157 (5th
 11 Cir. 1988)).

12 As noted by the Bank, there is no dispute as to the Debtor's history because the Debtor
 13 copied that history, almost word for word, the Lender's earlier brief. It should be noted that the
 14 Bank agrees with the Debtor's positions that Gonzales is not entitled to relief in the pending
 15 litigation.

16 The only remedial information that is relevant to creditors concerned with Plan
 17 confirmation is the Debtor's cash flow history and projections which show that the apartment
 18 complex has consistently produced sufficient cash flow to make the payments required by the
 19 Plan. The Disclosure Statement, as amended, includes the history and projections.

20 The Lender's main objection is that the Plan provided to take the matured over-secured
 21 debt and pay it with interest and amortization of principal with a balloon payment at the end of ten
 22 years with the Lender retaining its current lien position at all times. The Debtor's Disclosure
 23 Statement to the Amended Plan states Debtor's position on these issues.

24 2. Confirmability Arguments Should Be Ignored At This Time

25 The hearing on the disclosure statement is for determination of the adequacy of the
 26 disclosure statement. Bankruptcy Code §1125(a)(1). While there are cases which hold that a
 27 Court can deny approval of a disclosure statement of an absolutely unconfirmable plan, that is not
 28

1 present in the case.¹ “[S]uch action is discretionary and must be used carefully so as not to convert
 2 the disclosure statement hearing into a confirmation hearing, and to insure that due process
 3 concerns are protected.” *In re Miller*, 2008 WL 191256, *3 (Bankr.W.D.La. 2008) (quoting *In re*
 4 *Cardinal Congregate I*, 121 B.R.760, 764 (Bankr.S.D.Ohio 1990). The Debtor’s proposed Plan is
 5 confirmable for the following reasons:

6 1. The Bank will retain its lien position in compliance with Bankruptcy Code

7 §1129(b)(2)(A)(i)(I)

8 2. The Bank will be paid interest commensurable with its first lien position in
 9 compliance with Bankruptcy Code §1129(b)(2)(A)(i)(II).

10 3. The Bank and the Debtor will continue to dispute Gonzales’ allegations. If
 11 Gonzales is successful in his litigation and (1) has a lien and (2) that lien has priority ahead
 12 of the Bank’s lien, the Bank will have been overpaid (since it is an unsecured creditor).

13 4. The balloon payment proposed is 75% of the current debt. However, the property,
 14 according to the appraisals has a current loan to value ratio of 47%. That would make the
 15 balloon due in 10 years 35% of the current value of the property. In a normal financial
 16 market, there is reasonable expectation that such financing would be available.

17 Gonzales Claim

18 Gonzales has made a claim that both the Debtor and the Bank dispute. That issue is
 19 presently pending in the U.S. Bankruptcy Court for the District of Nevada as Adversary No. 11-
 20 05015. The presiding bankruptcy judge, Judge Zive, has recommended that the Adversary be
 21 withdrawn to the to the U.S. District Court because it involves non-bankruptcy issues between
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 23

24
 25 1. The case cited by the Bank, *In re Main Street AC, Inc.*, 234 B.R. 771, 775 (Bankr.N.D.Cal.
 26 1999), said that “a court may disapprove of a disclosure statement, even if it provides adequate
 27 information about a proposed plan, *if the plan could not possibly be confirmed.*” See also *In re*
 28 *CRIMI MAE, Inc.*, 251 B.R. 796, 799 (Bankr.D.Md. 2000) (same); *In re Mahoney Hawkes, LLP*,
 289 B.R. 285, 294 (Bankr.D.Mass.2002) (when the “plan is so fatally, and obviously flawed that
 confirmation is impossible.”).

several non-debtor parties² as well as issues between Gonzales and two debtors, and none of the claim arise under bankruptcy law³. That litigation will take an unknown amount of time to resolve. In the meantime, the Debtor's Plan reorganizes the Debtor's other debts. The Bank's position is, in this case, that no Plan can be confirmed when there is a larger disputed claim.

The Plan does deal with the Gonzales claim. He is not impaired. If Gonzalez wins, he will have a first lien on the property as well as property owned by non-debtor affiliates of the Debtor with substantial value in excess of \$10 million. None of Gonzales' rights will be affected by the Plan. If Gonzales wins but he is not given a first priority lien, he will have an unsecured debt owed to him of \$10 million by the Debtor and non-debtor affiliates. None of Gonzales' rights will be affected by the plan⁴. That is why his claim is deemed unimpaired. Based upon the motion to dismiss filed by the Bank in the pending Adversary Proceeding the Debtor may ask this Court to determine the amount currently due to Gonzales as \$0.

Feasibility

The Bank argues that the Plan is not "remotely feasible". The payments required on the Effective Date are outline in the Disclosure Statement and estimated as being \$101,635 (including \$50,000 for attorney's fees). See Disclosure Statement, page 17. The Debtor has \$79,179 cash as of June 30, 2011 shown on its Monthly Operating Report [Docket No. 76]. The Debtor's counsel has a retainer of approximately \$164,000 which should be sufficient to pay Debtor's counsel's administrative claim in full. The Debtor's post-petition operation of its apartment complex operates with a positive cash flow which is more than sufficient to pay the proposed monthly payment to the Bank. As stated in the Disclosure Statement, the Plan requires monthly payment to the Bank of approximately \$17,250 per month. In June, 2011 (the first full month of operation

2. The applicability of the U.S. Supreme Court's decision in *Stern v. Marshall*, No. 10-179, 564 U.S. ____ (June 23, 2011), is a concern to all parties.

3. This court can take judicial notice of the Order and Recommendation of Judge Zive [Docket No. 54 in Adversary No. 11-5015].

4. Of course, if Gonzales loses, his rights are unimpaired.

1 under Chapter 11), the Debtor paid the Bank \$14,959, pursuant to the Final Order Authorizing the
 2 Use of Cash Collateral [Docket No. 46], and still had a positive cash flow of \$17,458. See June,
 3 2011 Monthly Operating Report [Docket No. 76]. This indicates that a monthly payment to the
 4 Bank of \$17,250 is feasible. In addition, the Debtor has attached a schedule of its past cash flow
 5 and projected future cash flow as an exhibit to the Disclosure Statement. If the Bank is arguing
 6 that the payment of a balloon payment in 10 years is not feasible that is a matter of evidence at
 7 confirmation. At that time, the Debtor's burden is to prove feasibility.⁵

8 Fair and Equitable⁶

9 If the Bank's lien is not defective, the lien it retains under the Plan is not defective. This
 10 satisfies § 1129(b)(2)(A).

11 The Bank objects to the Plan being Fair and Equitable because the Gonzales lien question
 12 is not decided prior to confirmation. That is not a requirement of the statute. Bankruptcy Code
 13 §1129(b)(2)(A)(i)(I) only requires that the "creditor *retains* the lien securing its claim". The
 14 statute does not require a debtor to guarantee, improve or increase the priority of a creditor's lien.
 15 Both the Debtor and the Bank agree that Gonzales' alleged lien must be inferior to the Bank's lien
 16

17
 18 5. Under the feasibility requirement of § 1129(a)(11), a debtor must demonstrate that the plan
 19 "has a reasonable probability of success." *In re Acequia, Inc.*, 787 F.2d 1352, 1364 (9th Cir.1986);
 20 *See also In re Pizza of Hawaii, Inc.*, 761 F.2d 1374, 1382 (9th Cir.1985) ("The purpose of section
 21 1129(a)(11) is to prevent confirmation of visionary schemes which promise creditors and equity
 22 security holders more under a proposed plan than the debtor can possibly attain after
 23 confirmation."); and *In re Sagewood Manor Assoc. Ltd. Partnership*, 223 B.R. 756, 762-63
 24 (Bankr.D.Nev. 1998) ("While a reviewing court must examine 'the totality of the circumstances'
 25 in order to determine whether the plan fulfills the requirements of § 1129(a)(11), ... only 'a
 26 relatively low threshold of proof [is] necessary to satisfy the feasibility requirement.' ... The key
 27 element of feasibility is whether there exists a reasonable probability that the provisions of the
 28 plan of reorganization can be performed.").

6. The United States Court of Appeals for the Ninth Circuit has held that "[t]o be 'fair and
 equitable' [a] plan must satisfy, with respect to secured claims, one [not all] of the ... three tests"
 set forth in § 1129(b)(2)(A). *In re Arnold & Baker Farms*, 85 F.3d 1415, 1420 (9th Cir.1996); *In*
re Ambanc La Mesa Ltd. P'ship, 115 F.3d 650, 653 (9th Cir.1997) ("The 11 U.S.C. § 1129(b)(2)
 cramdown provision specifies that a fair and equitable plan provide one of three alternatives for
 the holders of secured claims."). The Plan satisfies the first test in § 1129(b)(2)(A).

1 because (a) Gonzales has no right to a lien and (b) because the Bank's lien was given pursuant to
 2 an order of the bankruptcy court and (i) the appeal from that order was taken and (ii) no stay
 3 pending appeal was granted⁷. See Bankruptcy Code §364(e).

4 Indubitable equivalent is not a valid issue because, the Debtor's Plan provides the Bank
 5 with the identical lien the Bank presently has. The issue of whether the interest payment is the
 6 indubitable equivalent of the bank's claim, is a question of fact, not determinable without an
 7 evidentiary hearing.⁸ The Debtor has revised the Plan to provide for an interest rate of 4.5% to
 8 reflect the current reduced interest rate of 10 year Treasury Notes (arguably, the "risk-free" rate)
 9 which are now below 2.5%. The Plan also provides the Bank with a stream of monthly payments
 10 as required by subsection II of §1129(b)(2)(A)(ii).⁹ The "value" of the stream of payments
 11 requires payment an appropriate rate of interest, considering the terms, quality of the security and
 12

13 7. This Court can take judicial notice of the pleadings in Case No. BK-S-02-16202-RCJ including
 14 Order (A) Authorizing Desert Oasis Apartments LLC Pursuant to 11 U.S.C. §§ 105, 361, 364(c)
 15 and 364(d), To Obtain Secured Post-Petition Financing; and (B) Scheduling A Final Hearing
 16 Pursuant to Bankruptcy Rule 4001(c) [Docket No. 134], from which no appeal was taken; and
 17 the Order Confirming Second Amended Chapter 11 Plan of Reorganization; Approving
 18 Settlement Agreement; Approving Assumption and Assignment of Executory Contracts and
 19 Unexpired Leases; and Dismissing Cases of DESERT OASIS APARTMENTS AND DESERT
 RANCH [Docket No. 189] from which an appeal was taken [Docket No. 212], a temporary stay
 pending appeal was granted [Docket No. 264] and a stay pending appeal was denied [Docket No.
 281].

20 8. See *In re CRIIMI MAE, Inc.*, 251 B.R. 796, 799 (Bankr.D.Md. 2000); *In re James Wilson*
 21 *Assocs.*, 965 F.2d 160, 172 (7th Cir.1992) ("question of whether the interest received by a secured
 22 creditor under a plan of reorganization is the indubitable equivalent of his lien is one of fact"); see
 23 also, *In re Snowshoe Co.*, 789 F.2d 1085, 1088 (4th Cir.1986) (finding indubitable equivalence in
 context of 11 U.S.C. § 361(3) to be "a question of fact rooted in measurements of value and the
 credibility of witnesses").

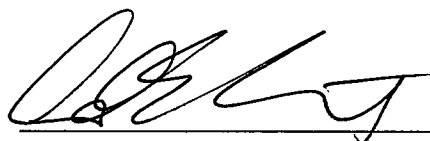
24 9. *Matter of Briscoe Enters., Ltd., II*, 994 F.2d at 1169 ("Deferred cash payments consist of an
 25 appropriate interest and an amortization of principal which constitutes the secured claim."); *U.S. v.*
 26 *TM Bldg. Products, Ltd.*, 231 B.R. 364, 372 (S.D.Fla.1998) ("Deferred cash payment' has been
 27 defined to mean periodic payments, the interval of which is determined by balancing the
 28 circumstances of the debtor with the reasonable right of the creditor to receive prompt payment of
 its claim." (quotation omitted)); *In re Weinstein*, 227 B.R. 284, 294 (9th Cir.BAP 1998)
 ("Subsection (II) of § 1129(b)(2)(A)(i) guarantees an electing creditor a stream of payments equal
 to its total claim.").

1 any risk to be borne by the affected creditor.¹⁰ The Debtor intends to introduce expert testimony
2 on this issue at the confirmation hearing.

3 **CONCLUSION**

4 This Court should approve the Disclosure Statement to the Amended Plan with the
5 additional information concerning the historic cash flow and projected cash flow of the apartment
6 complex.

7 Dated this 16th day of August, 2011.



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10 *In re P.J. Keating Co.*, 168 B.R. 464, 472 (Bankr.D.Mass. 1994); *In re Landscape Assocs., Inc.*, 81 B.R. 485, 487-88 (Bankr.E.D.Ark.1987).

EXHIBIT “1”

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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re
DESERT OASIS APARTMENTS, LLC,
 Debtor.

Case No. BK-S-11-17208-BAM
 Chapter 11

Hearing Date:
 Hearing Time:
 Place: Courtroom #3

DESERT OASIS APARTMENT, LLC'S AMENDED PLAN OF REORGANIZATION

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 DATED JUNE 24, 2011

ARTICLE I

SUMMARY

This Plan of Reorganization (the "Plan") under chapter 11 of the Bankruptcy Code (the "Code") proposes to pay creditors of DESERT OASIS APARTMENT, LLC (the "Debtor"). The Debtor owns the real property and improvements located in Las Vegas, NV described as Assessor's Parcel Number 162-28-310-001 (the "Property"). The Property consists of approximately 6.4 acres located on the south side of Mandalay Bay Road approximately 800 feet east of Las Vegas Boulevard. On the Property is an apartment complex consisting of 128 one- and two-bedroom units. Approximately, 92%-95% of the apartment units are occupied by tenants ("Tenants"). The Property is worth approximately \$6,500,000 and is subject to a loan in the approximate amount of \$3,076,000 now held by Wells Fargo Bank, N.A., as trustee for the Registered Holders of JPMorgan Chase Commercial Mortgage Pass-Through Certificates, Series 2004-FL1 (the "Bank") which has matured.

The current owner obtained title to the Property in August of 1999.

1 This Plan provides for one class of priority claims; one class of secured claims; one class of
 2 unsecured claims; and one class of equity security holders. **Under the Plan, the rights of Tenants**
 3 **are unimpaired.** The Bank will receive distributions which the proponent of this Plan has valued at
 4 100 cents on the dollar. The Plan proposes to pay the Bank in full over a period of 10 years using the
 5 rental income from the Tenants to pay market rate interest of 4.5% per annum and principal amortized
 6 over 25 years and a balloon payment at the end of 10 years obtained through sale or refinancing when
 7 the mortgage markets become more normal. Tenants with priority claims for deposits will be paid
 8 100% in the normal course of operation of the apartment complex. Under the Plan, the unsecured
 9 claim of Tom Gonzales is unimpaired. Under the Plan, the unsecured creditors, except insiders, will
 10 be paid over eleven months without interest. Under the Plan, insiders will agree to subordinate their
 11 claims to the claims of other unsecured creditors. This Plan also provides for the 100% payment of all
 12 other administrative, including fees payable to the Office of the United States Trustee, and priority
 13 claims upon confirmation.

14 All creditors and equity security holders should refer to Articles III through V of this Plan for
 15 information regarding the precise treatment of their claim. A disclosure statement that provides more
 16 detailed information regarding this Plan and the rights of creditors and equity security holders has
 17 been circulated with this Plan. **Your rights may be affected. You should read these papers**
 18 **carefully and discuss them with your attorney, if you have one. (If you do not have an attorney,**
 19 **you may wish to consult one.)**

20 ARTICLE II

21 CLASSIFICATION OF CLAIMS AND INTERESTS

- 22
- | | | | |
|----|------|-----------------|---|
| 23 | 2.01 | <u>Class 1.</u> | All allowed claims entitled to priority under § 507 of the Code. |
| 24 | 2.02 | <u>Class 2.</u> | The claim of the Bank, to the extent allowed as a secured claim under § |
| 25 | | | 506 of the Code. |
| 26 | 2.03 | <u>Class 3.</u> | The claim of Tom Gonzales. |
| 27 | 2.04 | <u>Class 4.</u> | All unsecured claims allowed under § 502 of the Code. |
| 28 | 2.05 | <u>Class 5.</u> | Equity interests in the Debtor. |

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ARTICLE III

TREATMENT OF ADMINISTRATIVE EXPENSE CLAIMS,

U.S. TRUSTEES FEES, AND PRIORITY TAX CLAIMS

3.01 Unclassified Claims. Under section §1123(a)(1), administrative expense claims, and priority tax claims are not in classes.

3.02 Administrative Expense Claims. Each holder of an administrative expense claim allowed under § 503 of the Code will be paid in full on the Effective Date of this Plan, in cash, or upon such other terms as may be agreed upon by the holder of the claim and the Debtor.

3.03 Priority Tax Claims. Each holder of a priority tax claim will be paid on the Effective Date of this Plan, in cash.

3.04 United States Trustee Fees. All fees required to be paid by 28 U.S.C. §1930(a)(6) (U.S. Trustee Fees) will accrue and be timely paid until the case is closed, dismissed, or converted to another chapter of the Code. Any U.S. Trustee Fees owed on or before the Effective Date of this Plan will be paid on the Effective Date.

ARTICLE IV

TREATMENT OF CLAIMS AND INTERESTS UNDER THE PLAN

4.01 Claims and interests shall be treated as follows under this Plan:

Class	Impairment	Treatment
Class 1 - Priority Claims	unimpaired	Class 1 is unimpaired by this Plan, and each holder of a Class 1 Priority Claim will be paid in full, in cash, upon the later of the effective date of this Plan as defined in Article VIII, or the date on which such claim is allowed by a final non-appealable order.

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Class 2 – Secured Claim of Bank (approximately \$3,100,000)	impaired	Class 2 is impaired by this Plan. The Bank will be paid its claim in full, including principal, accrued interest and costs and reasonable attorneys' fees. This amount shall be paid with interest at the rate of 4.5% per annum from the Effective Date. Beginning on 1 st day of the 1 st month following the Effective Date, the Bank shall be paid an amount necessary to amortize its claim over 25 years together with interest. In addition payments for insurance and real estate taxes will be escrowed. The balance of the Claim shall be all due and payable in 10 years from the Effective Date. There will be no pre-payment penalty. The loan will be assumable. The Bank shall retain its lien on the Property with the same priority it held of the date of the Debtor's Petition.
Class 3 – Tom Gonzales (\$10,000,000)	unimpaired	Class 3 is unimpaired by this Plan. Tom Gonzales will be paid the Parcel A Transfer Fee pursuant to the terms of the Desert Land Plan of Reorganization. That payment is due when, and only when, there is a Parcel A Transfer as defined in that plan. This claim is unsecured. This claim is subject to setoffs and counterclaims by the Debtor.
Class 4 - General Unsecured Creditors	impaired	Class 4 is impaired by this Plan. Non-Insider General Unsecured Creditors will be paid in full, without interest from the rent collected from the Tenant. Beginning on 1 st day of the 1 st month following the Effective Date, Class 4 will be paid \$3,000 per month pro rata for approximately 9 months. Desert Land, LLC, Citation Financial, LLC and Compass Investments Holdings, LLC have agreed to subordinate their claims to the claims of other unsecured creditors and will be paid only after all other unsecured creditors are paid in full and reasonable reserves for maintenance and repair of the Property have been funded.
Class 5- Equity Security Holders of the Debtor	unimpaired	Class 5 is unimpaired by this Plan. Equity Security Holders (the members of the Debtor) will retain their equity interest in the Debtor.

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ARTICLE V

ALLOWANCE AND DISALLOWANCE OF CLAIMS

5.01 Disputed Claim. A disputed claim is a claim that has not been allowed or disallowed by a final non-appealable order, and as to which either: (i) a proof of claim has been filed or deemed

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1 filed, and the Debtor or another party in interest has filed an objection; or (ii) no proof of claim has
2 been filed, and the Debtor has scheduled such claim as disputed, contingent, or unliquidated.

3 5.02 Delay of Distribution on a Disputed Claim. No distribution will be made on account
4 of a disputed claim unless such claim is allowed by a final non-appealable order.

5 5.03 Settlement of Disputed Claims. The Debtor will have the power and authority to settle
6 and compromise a disputed claim with court approval and compliance with Rule 9019 of the Federal
7 Rules of Bankruptcy Procedure.

8 ARTICLE VI

9 PROVISIONS FOR EXECUTORY CONTRACTS AND UNEXPIRED LEASES

10 6.01 Assumed Executory Contracts and Unexpired Leases.

11 (a) The Debtor assumes the following executory contracts and/or unexpired leases
12 effective upon the:

- 13 ■ Leases with Tenants.
- 14 ■ Westcorp Management Group - property management

15 (b) The Debtor will be conclusively deemed to have rejected all executory
16 contracts and/or unexpired leases not expressly assumed under section 6.01(a) above, or before the
17 date of the order confirming this Plan, upon the effective date of this Plan. A proof of a claim arising
18 from the rejection of an executory contract or unexpired lease under this section must be filed no later
19 than thirty (30) days after the date of the order confirming this Plan.

21 ARTICLE VII

22 MEANS FOR IMPLEMENTATION OF THE PLAN

23 The means for implementation of this Plan is the rents paid by Debtor's existing and future
24 Tenants. The Debtor will sell or refinance the Property within 120 months following the Effective
25 Date. The proceeds from such sale or refinance shall be used to fund the balloon payment to the Bank
26 as set forth in the Plan. If the Property is sold, the Debtor and its affiliates which own the adjacent
27 land will pay the Parcel A Transfer fee to Gonzales from the sales proceeds.

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ARTICLE VIII

GENERAL PROVISIONS

8.01 Definitions and Rules of Construction. The definitions and rules of construction set forth in §§ 101 and 102 of the Code shall apply when terms defined or construed in the Code are used in this Plan. Additionally, the following definitions apply:

a. The “Bank” shall mean Wells Fargo Bank, N.A., as trustee for the Registered Holders of JPMorgan Chase Commercial Mortgage Pass-Through Certificates, Series 2004-FL1.

b. The “Property” shall mean the real property and improvements thereon located in Las Vegas, NV described as Assessor’s Parcel Number 162-28-310-001 (the “Property”) consisting of approximately 6.4 acres located on the south side of Mandalay Bay Road and approximately 800 feet east of Las Vegas Boulevard.

c. The “Tenants” shall mean the tenants who rent apartment units on the Property.

d. The “Effective Date” of this Plan is the fifteenth business day following the date of the entry of the order of confirmation. But if a stay of the confirmation order is in effect on that date, the effective date will be the first business day after that date on which no stay of the confirmation order is in effect, provided that the confirmation order has not been vacated.

e. The “Desert Land Plan of Reorganization” is that plan of reorganization that was confirmed in the case of *In re Desert Land, LLC*, Case No. BK-S-02-16202-RCJ by an order entered April 13, 2003 as amended by decisions of the Bankruptcy Appellate Panel for 9th Circuit and the Court of Appeals for the 9th Circuit.

f. The “Parcel A Transfer Fee” is the fee provided to be paid to Tom Gonzales in the Desert Land Plan of Reorganization when, and only when, there is a Parcel A Transfer as defined in the Desert Land Plan of Reorganization.

8.02 Severability. If any provision in this Plan is determined to be unenforceable, the determination will in no way limit or affect the enforceability and operative effect of any other provision of this Plan.

8.03 Binding Effect. The rights and obligations of any entity named or referred to in this Plan will be binding upon, and will inure to the benefit of the successors or assigns of such entity.

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1 8.04 Captions. The headings contained in this Plan are for convenience of reference only
2 and do not affect the meaning or interpretation of this Plan.

3 8.05 Controlling Effect. Unless a rule of law or procedure is supplied by federal law
4 (including the Code or the Federal Rules of Bankruptcy Procedure), the laws of the State of Nevada
5 govern this Plan and any agreements, documents, and instruments executed in connection with this
6 Plan, except as otherwise provided in this Plan.

7 8.06 Governance. The Debtor will maintain its current form of governance and its current
8 managers until such managers are replaced as provided in its existing Operating Agreement.

9 8.07 Revesting of Assets in the Debtor. Upon confirmation of the Plan, all property of the
10 estate of the Debtor shall be revested in the Debtor, pursuant to 11 U.S.C. § 1141(c), which shall
11 retain such property as the Reorganized Debtor free and clear of all claims and interests of the
12 creditors, except as set forth in the Plan.

13 8.08 Disbursing Agent. The Debtor will serve as disbursing agent and shall make all
14 payments required under the Plan. The disbursing agent may employ or contract with other entities to
15 assist in or to perform the distribution of the property and shall serve without bond.

16 8.09 Request for Application of 11 U.S.C. § 1129(b). The Debtor, as Plan proponent, will
17 request the Court to find that the provisions for dissenting classes provide for fair and equitable
18 treatment of said creditors, and to confirm its Plan notwithstanding the requirements of § 1129(a)(8)
19 as to such classes.

20 8.10 Post-Confirmation Management of the Debtor. The Debtor shall be managed post-
21 confirmation by its current manager, David Gaffin.

22 8.11 Post-Confirmation Litigation. The Debtor anticipates post-confirmation litigation with
23 Tom Gonzales over the enforcement of the terms of the Plan of Reorganization entered in the Desert
24 Land, LLC Chapter 11 case, as amended by the decisions of the Bankruptcy Appellate Panel for the
25 9th Circuit and the Court of Appeals for the 9th Circuit, and except for collection matters that may
26 occur in the normal course of the Debtor's business, and the determination of certain claims. The
27 Debtor reserves the right to prosecute any objections to claims.
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1 8.12 Post-Confirmation Default. In the event the Debtor becomes delinquent in duty or
2 obligation under the Plan, the affected creditor or creditors may provide written notice of such default
3 to the Debtor and its counsel at the following addresses:

4
5 Lenard E. Schwartz, Esq.
6 Schwartz & McPherson Law Firm
7 2850 S. Jones Blvd, Ste. 1
8 Las Vegas, NV 89146-5308

 Desert Oasis Apartments, LLC
 10181 Park Run Drive, Ste. 200
 Las Vegas, NV 89145

9 The Debtor shall thereafter have fifteen (15) business days from receipt of said notice in which to cure
10 the default. In the event such default remains uncured, the affected creditor or creditors may bring the
11 matter before the Bankruptcy Court. At any hearing, the Bankruptcy Court may consider the reason
12 for the default and the ability of the Debtor to bring the payment(s) current in a reasonable period of
13 time. The Bankruptcy Court may also consider conversion of the case to a Chapter 7 of the Code or
14 dismissal if the same is in the best interests of creditors.

15 8.13 Federal Income Tax Consequences of the Plan. The Plan will have limited tax
16 consequences. The Debtor, as a limited liability company, has elected to be treated as a partnership
17 for federal income tax purposes and, therefore, does not pay federal income tax. The Plan does not
18 call for forgiveness of any debt. Creditors are advised to discuss with their own tax advisor any tax
19 effect to the creditor of such payments.

20 8.14 Injunction. From and after the Effective Date, and except as provided in the Plan and
21 the Confirmation Order, all entities that have held, currently hold, or may hold a Claim, are
22 permanently enjoined from taking any of the following actions on account of any such Claims: (i)
23 commencing or continuing in any manner any action or other proceeding against the Debtor, or its
24 Property; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award,
25 decree or order against the Debtor or the Reorganized Debtor, or their respective property; (iii)
26 creating, perfecting or enforcing any lien or encumbrance against the Debtor or the Reorganized
27 Debtor, or their respective property; (iv) asserting a setoff, right of subrogation or recoupment of any
28 kind against any debt, liability, or obligation due to the Debtor or the Reorganized Debtor, or their

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1 respective property; or (v) commencing or continuing any action, in any manner or any place, that
2 does not comply with or is inconsistent with the provisions of the Plan or the Bankruptcy Code.

3 8.15 Exculpation. From the Petition Date through the Effective Date, the Debtor and its
4 managers, attorneys, agents and employees shall not have any liability to the Debtor or any other
5 claimants or creditors, or other parties in interest in the Bankruptcy Case for any act or omission in
6 connection with or arising out of the Bankruptcy Case, including, without limitation, prosecuting
7 confirmation of the Plan, confirmation of the Plan, and the administration of the estate, the Plan or the
8 property to be distributed under the Plan, except for gross negligence or willful misconduct, and in all
9 respects, such persons will be entitled to rely on the advice of counsel with respect to their duties and
10 responsibilities with respect to the Chapter 11 Case and the Plan.

11 8.16 Post-petition Employment of Counsel. Following the Effective Date, the Debtor may
12 continue to employ counsel for necessary legal services. Counsel may be paid from the Debtor
13 without further order of the Court.

14 8.17 Closing Case. The estate shall be deemed to be fully administered upon the
15 commencing of distributions to the Class 1 creditor and the case may be closed.

16 ARTICLE IX

17 DISCHARGE

18 Discharge. The Debtor shall be discharged from any debt that arose before confirmation of the
19 Plan, subject to the occurrence of the effective date.

20 Respectfully submitted,

21 Desert Oasis Apartments, LLC

22 By _____
23 David Gaffin, Manager

24 The Plan Proponent

25 Prepared by:

26 SCHWARTZER & McPHERSON LAW FIRM
27
28

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SCHWARTZER & MCPHERSON LAW FIRM

2850 South Jones Boulevard, Suite 1
Las Vegas, Nevada 89146-5308
Tel: (702) 228-7590 · Fax: (702) 892-0122

1 By:
2 Lenard E. Schwartzer, Esq.
3 *Counsel for the Debtor and Debtor in Possession*
4 *And Plan Proponent*
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EXHIBIT “2”

SCHWARTZER & MCPHERSON LAW FIRM

2850 South Jones Boulevard, Suite 1
Las Vegas, Nevada 89146-5308
Tel: (702) 228-7590 - Fax: (702) 892-0122

LENARD E. SCHWARTZER (NV Bar No. 0399)
JEANETTE E. MCPHERSON (NV Bar No. 5423)
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Facsimile: (702) 892-0122
Email: bkfilings@s-mlaw.com

Counsel for Debtor and Debtor in Possession

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re

DESERT OASIS APARTMENTS, LLC,

Debtor.

Case No. BK-S-11-17208-BAM

Chapter 11

Hearing Date: August 23, 2011
Hearing Time: 10:00 a.m.
Place: Courtroom #3

DESERT OASIS APARTMENTS, LLC'S
DISCLOSURE STATEMENT TO
DEBTOR'S AMENDED PLAN OF REORGANIZATION

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I. INTRODUCTION

DESERT OASIS APARTMENTS, LLC (the "Debtor" or "Desert Oasis") is the owner of Parcel Number 162-28-310-001 (the "Property"). The Property consists of approximately 6.4 acres located on the south side of Mandalay Bay Road approximately 800 feet east of Las Vegas Boulevard. On the Property is an apartment complex consisting of 128 one- and two-bedroom units. Approximately, 92%-95% of the apartment units are occupied by tenants ("Tenants"). The Property is worth approximately \$6,500,000¹ and is subject to a loan in the approximate amount of \$3,076,000 now held by Wells Fargo Bank, N.A., as trustee for the Registered Holders of JPMorgan Chase Commercial Mortgage Pass-Through Certificates, Series 2004-FL1 (the "Bank") which has matured. The current owner obtained title to the Property in August of 1999.

The Debtor has proposed an Amended Plan of Reorganization (the "Plan"). The Plan provides for one class of priority claims; one class of secured claims; one class of unsecured claims; and one class of equity security holders. Under the Plan, the rights of Tenants are unimpaired. The Bank will receive distributions which the proponent of this Plan has valued at 100 cents on the dollar. The Plan proposes to pay the Bank's claim in full over a period of 10 years using the rental income from Tenants to pay interest at the rate of 4.5% per annum interest and principal amortized over 25 years and a balloon payment on or before 10 years. The final payment will be accomplished through sale or refinancing as the mortgage markets become more normal. Tenants with priority claims for deposits will be paid 100% in the normal course of operation of the apartment complex. Under the Plan, the unsecured claim of Tom Gonzales is unimpaired. Under the Plan, the unsecured creditors, except insiders, will be paid over eleven months without interest. Under the Plan, insiders will agree to subordinate their claims to the claims of other unsecured creditors. This Plan also provides for the 100% payment of all other administrative, including fees payable to the Office of the United States Trustee, and priority claims upon confirmation.

¹ The Market Value of the Property, "As Is - As Stabilized" as of May 26, 2011, was determined by RCS APPRAISAL, INC. to be \$6,000,000. The Debtor's opinion is that the Property's market value is \$6,500,000.

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1 This is the disclosure statement (the "Disclosure Statement") in the chapter 11 case of
 2 **DESERT OASIS APARTMENTS, LLC**. This Disclosure Statement contains information about the
 3 Debtor and describes the **DESERT OASIS APARTMENTS, LLC's AMENDED PLAN OF**
 4 **REORGANIZATION** (the "Plan") filed by the Debtor. ~~A full copy of the Plan is attached to this~~
 5 Disclosure Statement as Exhibit "A." *Your rights may be affected. You should read the Plan and*
 6 *this Disclosure Statement carefully and discuss them with your attorney. If you do not have an*
 7 *attorney, you may wish to consult one.*

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8 The proposed distributions under the Plan are discussed at pages 22-25 of this Disclosure
 9 Statement. All Creditors holding allowed claims will receive distributions which the proponent of this
 10 Plan has valued at 100 cents on the dollar.

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11 **A. Purpose of This Document**

12 This Disclosure Statement describes:

- 13 • The Debtor's assets and liabilities;
- 14 • The Debtor and significant events during the bankruptcy case;
- 15 • How the Plan proposes to treat claims or equity interests of the type you hold (*i.e.*,
 16 what you will receive on your claim or equity interest if the plan is confirmed);
- 17 • Who can vote on or object to the Plan;
- 18 • What factors the Bankruptcy Court (the "Court") will consider when deciding whether
 19 to confirm the Plan;
- 20 • Why the Proponent believes the Plan is feasible, and how the treatment of your claim
 21 or equity interest under the Plan compares to what you would receive on your claim or
 22 equity interest in liquidation; and
- 23 • The effect of confirmation of the Plan.

24 Be sure to read the Plan as well as the Disclosure Statement. This Disclosure Statement
 25 describes the Plan, but it is the Plan itself that will, if confirmed, establish your rights.

26 **B. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing**

27 The Court has not yet confirmed the Plan described in this Disclosure Statement. This section
 28 describes the procedures pursuant to which the Plan will or will not be confirmed.

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1 1. *Time and Place of the Hearing to Confirm the Plan*

2 The hearing at which the Court will determine whether confirm the Plan will take place
3 on a date and time to be set by the Court at the United States Bankruptcy Court, Foley Federal
4 Building, 300 Las Vegas Boulevard South, Las Vegas, Nevada.

5 2. *Deadline For Voting to Accept or Reject the Plan*

6 If you are entitled to vote to accept or reject the plan, vote on the enclosed ballot and
7 return the ballot in the enclosed envelope to Schwartzer & McPherson Law Firm, 2850 South Jones
8 Boulevard, Suite 1, Las Vegas, Nevada 89146-5308. See section IV.A. below for a discussion of
9 voting eligibility requirements.

10 Your ballot must be received by on a date to be set by the Court or it will not be counted.

11 3. *Deadline For Objecting to the Confirmation of the Plan*

12 Objections to the confirmation of the Plan must be filed with the Court and served
13 upon Schwartzer & McPherson Law Firm, 2850 South Jones Boulevard, Suite 1, Las Vegas, Nevada
14 89146-5308 by on a date to be set by the Court.

15 4. *Identity of Person to Contact for More Information*

16 If you want additional information about the Plan, you should contact Schwartzer &
17 McPherson Law Firm, 2850 South Jones Boulevard, Suite 1, Las Vegas, Nevada 89146-5308.

18 C. **Disclaimer**

19 *The Court has approved this Disclosure Statement as containing adequate information to*
20 *enable parties affected by the Plan to make an informed judgment about its terms. The Court has*
21 *not yet determined whether the Plan meets the legal requirements for confirmation, and the fact*
22 *that the Court has approved this Disclosure Statement does not constitute an endorsement of the*
23 *Plan by the Court, or a recommendation that it be accepted.*

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II. BACKGROUND

A. Description and History of the Debtor's Business

1. *The Property*

The Debtor was formed for the purpose of acquiring the Property in 1999. The Property is identified as the Oasis, a 127-unit apartment complex located approximately one-half mile south of Tropicana Avenue and about one-fourth mile east of Las Vegas Boulevard within the unincorporated township of Paradise in Clark County, Nevada. It is identified as Assessor's Parcel Number 162-28-310-001. The project consists of 127 units that were built in 1984. The Property consists of 110,391 square feet of net rentable area with 16 two-story buildings with a mixture of one-bedroom, and two-bedroom units ranging in size from 681 to 1,013 square feet. The average unit size is 869 square feet. The Property also includes a rental office, laundry, swimming pool and a spa. Each unit includes a designated one-car covered parking stall. At this time, approximately 95% of the apartment units are occupied.

2. *The Gonzales Loan*

On December 7, 2000, Tom Gonzales ("Gonzales") loaned \$41.5 million ("Gonzales Loan") to Desert Land, LLC ("Desert Land") and Desert Oasis to finance Desert Land and Desert Oasis' acquisition of certain property in Las Vegas, Nevada². The Gonzales Loan was secured by a Deed of Trust recorded against property owned by Desert Land and Desert Oasis, commonly known by the parties as Parcel "A"³. In addition, in further consideration for the Gonzales Loan, Desert Land and Desert Oasis deeded to Gonzales an undivided five percent (5%) ownership interest in Parcel "A", and deeded another undivided half a percent (0.5%) ownership interest to a different investor⁴. As

2. The primary business of Desert Land, Desert Ranch and Desert Oasis was to assemble large parcels of real estate along Las Vegas Boulevard, in Las Vegas, Nevada, for development, joint venture, or sale.

3. The property comprising Parcel "A", under the Gonzales Loan and the Deed of Trust was made up of various smaller parcels owned by Desert Land, and the Property owned by Desert Oasis.

4. Barry Fieldman was deeded an undivided 0.5% interest. Because Desert Land and Desert Oasis deeded 5.5% of their interest in Parcel "A" to Gonzales and Fieldman, the Deed of Trust was only secured by a 94.5% interest in Parcel "A".

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1 additional security for the Gonzales Loan, Desert Land assigned and granted to Gonzales a security
2 interest in Desert Lands' unexercised option to purchase four parcels of property near Parcel "A" from
3 FLT Trust ("FLT Option").

4 Additional security for the Gonzales Loan included Desert Ranch, LLC ("Desert Ranch")
5 guaranteeing the loan and pledging Gonzales a thirty-two and a half percent (32.5%) interest in New
6 World, LLC⁵, which owned additional parcels of real estate south of Parcel "A", commonly referred
7 to by the parties as Parcels "B", "C", and "D".

8 3. *Desert Land & Desert Oasis Bankruptcy Action*

9 On May 31, 2002, Desert Land and Desert Oasis each filed separate voluntary bankruptcy
10 petitions, which the bankruptcy court ordered jointly administered⁶. On August 26, 2002, Desert Land
11 and Desert Oasis filed and sought approval of their joint disclosure statement and joint plan of
12 reorganization. However, Gonzales and Makena Entertainment, LLC filed an opposition to Desert
13 Land and Desert Oasis' proposed joint disclosure statement and plan, and so the bankruptcy court held
14 a hearing on the motion on September 25, 2002. At the hearing the bankruptcy court ruled that various
15 amendments be made to the disclosure statement.

16 On January 2, 2003, Desert Land and Desert Oasis filed an amended disclosure statement,
17 which the bankruptcy court approved on January 8, 2003. A contested confirmation hearing for the
18 amended disclosure statement was set for January 29, 2003. On January 24, 2003, Gonzales filed an
19 objection to the debtors' confirmation plan of reorganization, petitioning the Court to hear the matter
20 at the scheduled contested hearing on the objection to the plan. Desert Land and Desert Oasis then
21 filed their amended plan of reorganization on January 29, 2003.

22 At the contested confirmation hearing in January, 2003, Gonzales and Desert Oasis, Desert
23 Land, and Desert Ranch announced to the bankruptcy court that they had arrived at a settlement. The
24

25
26 5. At the time of the Gonzales Loan transaction, Desert Ranch owned 65% of New World, LLC,
27 Gonzales and his assignees owned 30%, and Makena Entertainment, LLC owned the remaining 5%.

28 6. Desert Ranch, LLC also filed a separate voluntary bankruptcy petition on May 31, 2002, which the
bankruptcy court ordered jointly administered with Desert Land and Desert Oasis.

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1 bankruptcy court then suspended confirmation of the disclosure statement and plan of reorganization
2 so that the parties could memorialize their Settlement Agreement. The terms of the settlement
3 provided that:

- 4 (1) Gonzales would extinguish his note, reconvey his deed of trust, and release Desert Ranch's
5 guarantee and pledge so that Desert Land and Desert Oasis would own 100 percent of Parcel
6 "A";
7 (2) Gonzales would receive \$10 million if Parcel "A" upon the occurrence of certain triggering
8 events on any part of Parcel "A" ("Parcel "A" Transfer Fee")⁷;
9 (3) Gonzales and Fieldman would convey to Desert Land and Desert Oasis their total
10 5.5 percent interest in Parcel "A"; and
11 (4) In exchange, Gonzales was to receive Desert Ranch's 65 percent interest in New
12 World.

13 See Exhibit "D", BAP Decision, at 5:26-23.

14 Also under the settlement, for the parcel of property owned by Desert Oasis constituting Parcel
15 "A", Gonzales agreed to subordinate his deed of trust⁸ to a loan of up to \$5 million so that the
16 property could be used to secure a loan⁹. Gonzales also allowed his five percent (5%) interest in the
17 Desert Oasis parcel to be encumbered by the loan. Thus, by the settlement agreement between them,
18

19 7. Gonzales asserts and the Debtor disputes:

20 As additional consideration for Gonzales' release of his note and deed of trust, he received the rights
21 that would result in payment to the Parcel A Transfer Fee upon the occurrence of certain triggering
22 events on any part of Parcel A, whether owned by Desert Oasis or Desert Land.

23 8. The single parcel of property owned by Desert Oasis constituting Parcel "A" was also eventually
24 reconveyed by Gonzales to Desert Oasis, per the terms of the settlement, on June 6, 2003. The Deed
25 of Reconveyance was duly recorded in the Official Records of Clark County Nevada on June 6, 2003,
26 as Document No. 0000735.

27 9. The bankruptcy court later approved Desert Oasis, Desert Land, and Desert Ranch's loan for \$2
28 million from Eagle Mortgage Company. Gonzales asserts and the Debtor disputes:
29 Debtor inaccurately describes the agreed-to subordination under the settlement agreement. The
30 agreement discussed was a separate interim agreement wherein the Mr. Gonzales' deed of trust would
31 be subordinated to a loan for interim purposes pending the completion of settlement of documentation
32 and the actual reconveyance of the his deed of trust. Any implication that this was an agreement to
33 subordinate beyond interim financing pending the completion of the settlement documentation is an
34 incorrect implication.

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that Desert Land would own 100 percent of
Parcel "A".

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ninety days, \$7.5 million if sold within ninety days

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1 the parties essentially agreed that Desert Oasis and Desert Land would get Parcel "A", Gonzales
2 would get Parcels "B", "C", and "D", and would receive the Parcel "A" Transfer Fee upon the
3 occurrence of a qualifying land transfer associated with Parcel "A".

4 Despite their having arrived at a settlement, over the next few months the parties were unable
5 to document the settlement in a manner acceptable to all parties. The sole dispute preventing the
6 parties from finalizing the settlement was Desert Oasis, Desert Land, and Desert Ranch's demand that
7 the \$10 million Parcel "A" Transfer Fee be subordinated to future additional financing obtained by
8 Desert Oasis and Desert Land, secured by Parcel "A". See **Exhibit D**, BAP Decision, 6:11-14, 23-25;
9 10:20-23. Gonzales refused to include such a mandatory subordination clause in the settlement
10 agreement. Finally, on April 21, 2003, after numerous previous hearings on the matter, with the
11 parties still deadlocked, the bankruptcy court declared that an oral settlement agreement had already
12 been reached and entered an Order confirming Desert Oasis, Desert Land, and Desert Ranch's Second
13 Amended Plan of Reorganization. This Confirmation Order with the Settlement Agreement attached is
14 attached hereto as **Exhibit "C"**. With respect to the treatment of the Parcel "A" Transfer Fee which
15 had been the sole reason for the hold up in finalizing the settlement agreement, the bankruptcy court
16 ruled that Desert Oasis, Desert Land, and Desert Ranch could subordinate the Parcel "A" Transfer Fee
17 up to \$45 million in financing. Interestingly, such a subordination was not even required since
18 Gonzales had no lien against the Parcel "A" property, having given up his deed of trust in the
19 settlement. The Court-approved Settlement Agreement specifically provided: "The Parcel A Transfer
20 Fee shall be evidenced by the Parcel A Memorandum, which shall not, however, constitute a
21 mortgage, deed of trust or other lien on Parcel A, and payment thereof shall be subordinate to any
22 Parcel A Permitted Financing."¹⁰ This provision was not overturned by the appellate courts.

23 The Desert Land confirmation order specifically dismissed the Chapter 11 bankruptcy
24 proceedings of Desert Oasis and Desert Ranch, and that an subsequent order was entered dismissing
25 both cases.

26
27
28 10. Gonzales disputes the Debtor's analysis of this language.

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1 4. *Gonzales' Appeal of the Subordination Language in the Settlement Agreement*

2 On May 5, 2003, Gonzales filed a notice of appeal from the confirmation order. The
3 Bankruptcy Appeal Panel of the Ninth Circuit ("BAP Court") heard a request for a stay pending
4 appeal and, ultimately, denied that request. The BAP heard the argument on the appeal on October 23,
5 2003, and issued a final decision on March 31, 2004. In its decision, the BAP Court confirmed that the
6 sole issue being appealed and considered by the court was the subordination provision in the
7 settlement agreement. *See Exhibit "D"*, BAP Decision 10:20-23. Namely, appellant Gonzales
8 contended that while the parties did indeed arrive at a settlement, the bankruptcy court had erred when
9 it ordered the inclusion of a subordination provision as part of the agreement, as Gonzales had never
10 agreed to any such provision. *See Exhibit "D"*, BAP Decision 10:13-20. The BAP Court specifically
11 identified the subordination language from the Bankruptcy Court Order, which was at issue in the
12 appeal, as the following:

13 Gonzales will subordinate his right to the payment of the Parcel Transfer Fee to any
14 such Parcel A Permitted Financing and shall execute, acknowledge and deliver, from
15 time to time, upon no less than 20 day written notice to Gonzales, such subordination
16 agreement(s) as may be reasonably required by title insurer insuring the liens or
17 security interests related to the Permitted Parcel A Financing.

18 *Exhibit "D"*, BAP Decision 7:15-19.

19 Upon a hearing of the matter, and as reflected in the March 21, 2004 BAP Decision, the BAP
20 Court ordered that the subordination provision be eliminated from the settlement agreement and
21 bankruptcy court order, and that otherwise the bankruptcy court's order confirming Desert Land and
22 Desert Oasis' second amended plan of reorganization was affirmed. Upon further appeal to the Court
23 of Appeals, the BAP's decision was affirmed. *See Exhibit "E"*.

24 5. *JP Morgan Chase Loan*

25 In between the Bankruptcy Court's Order Confirming the Second Amended Plan of
26 Reorganization, and the BAP Decision by the BAP Court, JP Morgan Chase issued a loan to Desert
27 Oasis in the amount of \$5,200,000.00 (the "Loan"). The Loan was secured by a Deed of Trust duly
28 recorded against a parcel of property owned by Desert Oasis ("Desert Oasis Parcel") which was part

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1 of Parcel "A". As noted above, the Desert Oasis Parcel, together with Desert Land's other parcels of
2 property comprising Parcel "A", was the subject matter of bankruptcy dispute.

3 The Loan was later assigned by JP Morgan Chase to Wells Fargo Bank, N.A. as trustee for the
4 Registered Holders of JPMorgan Chase Commercial Mortgage Pass-Through Certificates, Series
5 2004-FL1 (the "Bank" or "Wells Fargo"). The history of the Loan, as described by the Bank's
6 counsel, is as follows:

7 a. On July 21, 2003, Original Lender made the Loan to the Debtor in the principal
8 amount of \$5,200,000, as evidenced by a note, a properly recorded deed of trust, a properly
9 recorded assignment of leases and rents, properly recorded financing statements, and a
10 guaranty executed by the Debtor's managers, David B. Gaffin and B. Howard Bulloch
11 (collectively, the "Loan Documents").

12 b. The original maturity date for the Loan was August 10, 2006 (the "Original
13 Maturity Date"). The Loan was secured by the apartment complex that is the subject of the
14 Motion (the "Property") and the rents generated by the Property.

15 c. In connection with a securitization, the Loan was transferred by Original
16 Lender to Wells Fargo Bank, N.A., a national banking association, as trustee for J.P. Morgan
17 Chase Commercial Mortgage Securities Corp., a Delaware corporation, as lender ("Lender").

18 d. Midland Loan Services, Inc., a Delaware corporation ("Midland"), is the Loan's
19 servicer. Pursuant to a participation agreement dated as of August 17, 2004, between Original
20 Lender and Capital Trust, Inc. ("Capital Trust"), Lender appointed Special Servicer, which has
21 authority to assert Lender's interests with respect to the Loan.

22 Gonzales requests that we note the following: In Desert Oasis' prior bankruptcy, it did not
23 apply for or obtain financing pursuant to 11 U.S.C. § 364. Similarly, the Disclosure Statement should
24 reflect that neither the Desert Land confirmation order nor Desert Land's confirmed plan provided for
25 any notice, any hearing, any findings, or any approval of any specific loan to Desert Oasis, nor for the
26 grant of any super priority lien to any specific lender (or to any lender) for a loan to Desert Oasis,
27 under § 364.

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1 Gonzales requests that we note the following: "The Disclosure Statement states that the loan
 2 between Debtor and JP Morgan Chase (since assigned to Wells Fargo) was made during the time
 3 between the order confirming Desert Land's plan and the decision of the Bankruptcy Appellate Panel.
 4 Debtor apparently seeks to imply the loan was part of the bankruptcy proceedings, and thus seeks to
 5 mislead creditors in soliciting a vote on the plan. However, as Debtor states in the Disclosure
 6 Statement, the original loan was made on July 21, 2003, at which time Desert Oasis, was not a debtor
 7 in any bankruptcy case. The portion of Parcel A owned by Desert Oasis was not property of the estate
 8 at that time, as the bankruptcy of Desert Oasis had been ordered dismissed both on April 21, 2003 and
 9 June 23, 2003.

10 **The Loan Maturity Date Is Extended Multiple Times through 2010**

11 e. On August 2, 2006, Special Servicer agreed to waive a debt coverage ratio of
 12 2.0 to 1 and extend the Original Maturity Date by one year to August 10, 2007, provided that,
 13 among other conditions, the Debtor paid certain fees and made a payment of \$1,025,000,
 14 which funds were to be applied to reduce the then currently outstanding principal amount of
 15 the Loan.

16 f. On July 30, 2007, Special Servicer again agreed to waive a debt coverage ratio
 17 of 2.0 to 1, waive the prohibition of partial payment of the Loan, and to extend the maturity
 18 date by an additional year to August 10, 2008, provided that, among other conditions, the
 19 Debtor paid certain fees and made a payment of \$340,000, which funds were to be applied to
 20 reduce the then currently outstanding principal amount of the Loan.

21 g. The Debtor notified Special Servicer of its inability to repay the Loan at its
 22 August 10, 2008, maturity. Accordingly, on August 11, 2008, Special Servicer agreed to a
 23 two-month extension, provided that, among other conditions, the Debtor paid certain fees and
 24 made a payment to Midland of \$250,000, which funds were to be applied to reduce the then
 25 currently outstanding principal amount of the Loan.

26 h. Debtor again notified Special Servicer of its inability to repay the Loan at its
 27 December 10, 2008, maturity. On December 4, 2008, Special Servicer agreed to another
 28 extension to April 10, 2009, provided that, among other conditions, the Debtor paid certain

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1 fees and made a payment of \$235,000, which funds were to be applied to reduce the then
2 currently outstanding principal amount of the Loan.

3 **Debtor Defaults in April 2009**

4 i. On April 14, 2009, Special Servicer sent the Debtor a reservation of rights letter
5 notifying the Debtor that a default had occurred because the Debtor had failed to pay the Loan
6 on April 10, 2009, the then existing maturity date.

7 **The Parties Agree to a Forbearance; Debtor begins Paying Excess Cash Flow to**
8 **Lender**

9 j. On April 17, 2009, Lender, the Debtor, and the two guarantors (B. Howard
10 Bulloch and David Gaffin) entered into a Pre-Negotiation Agreement, wherein the parties
11 agreed on certain terms regarding discussions they were conducting related to the Loan. As a
12 result, the parties agreed to extend the maturity date to October 10, 2009, provided that, among
13 other conditions, (a) the Debtor paid certain fees, (b) interest began to accrue on the Loan at a
14 rate of LIBOR plus 400 basis points, with a LIBOR floor of 2%, (c) the Debtor instituted a
15 hard cash management system whereby all of the excess cash flow would be held by Lender as
16 additional collateral, which arrangement was memorialized by that certain Blocked Account
17 Control Agreement dated June 25, 2009 by and between Debtor and Lender (the "Blocked
18 Account Control Agreement"), and (d) Debtor was prohibited from making distributions to its
19 members or the guarantors.

20 k. The Debtor notified Special Servicer of its inability to repay the Loan at its
21 October 10, 2009, maturity. Accordingly, in December 2009, Special Servicer agreed to a
22 short term extension to July 10, 2010, provided that, among other conditions, (a) the Debtor
23 paid certain fees, (b) interest continued to accrue on the Loan at a rate of LIBOR plus 400
24 basis points, with a LIBOR floor of 2%, (c) the Loan hard cash management system
25 contemplated above and memorialized with the Blocked Account Control Agreement
26 continued, with excess cash flow to be applied to reduce the then outstanding principal balance
27 of the Loan; and (d) the Debtor was prohibited from making distributions to its members or
28 any guarantor.

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1. On July 12, 2010, Special Servicer sent the Debtor a reservation of rights letter notifying the Debtor that (A) a default had occurred because the Debtor had failed to pay the outstanding principal amount on July 10, 2010, the then existing maturity date, and (B) Lender had a right to exercise all of its rights and remedies under the Loan Documents. (*Id.* at ¶ 16).

m. Pursuant to these agreements, a lock box account was established at U.S. Bank National Association (the "Lockbox"). Starting in July 2009, all rents from the Property were deposited in the Lockbox. From such deposited funds, the Lender deducted on a monthly basis the following payments: (i) amounts due for the tax and insurance reserve; (ii) monthly interest due; and (iii) \$15,000 toward the Loan's principal balance. Funds in the Lockbox were then released to the Debtor to pay its operating expenses. Subsequently, any excess cash was swept by Lender and applied toward the Loan's principal balance. The Debtor unilaterally ceased making deposits in the Lockbox after November 9, 2010, and has made no further deposits in violation of the Loan Documents. The Debtor made principal and interest payments on December 9, 2010, and January 9, 2011, but has made no further payments to the Lender. As a result, to ensure that taxes were paid current on the property, on February 25, 2011 Lender was forced to advance its own funds for taxes.

n. According to the Lender, the outstanding balance of the Loan as of the Petition Date was \$3,078,190.76, comprised of principal in the amount of \$2,895,322.16, monthly interest in the amount of \$57,914.05, and default interest in the amount of \$124,954.55.

Lender Begins Foreclosure Proceedings in January 2011

o. On January 14, 2011, Lender initiated foreclosure proceedings on the Property.

p. In accordance with Nevada law, the foreclosure sale for the Property was scheduled for May 11, 2011.

6. The Gonzales Action

On January 13, 2011, Gonzales brought an action commencing the litigation in the Eighth Judicial District Court for the State of Nevada (the "Gonzales Action"). The defendants are:

DESERT LAND, LLC, a Nevada limited liability company;

DESERT OASIS APARTMENTS, LLC, a Nevada limited liability company;

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DESERT OASIS INVESTMENTS, LLC, a Nevada limited liability company;
 SPECIALTY TRUST, a Maryland corporation;
 SPECIALTY STRATEGIC FINANCING FUND, LP, a Delaware limited partnership;
 EAGLE MORTGAGE COMPANY; and
 WELLS FARGO BANK, N.A., AS TRUSTEE FOR THE REGISTERED HOLDERS OF J. P.
 MORGAN CHASE COMMERCIAL MORGAN SECURITIES CORP.,
 COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2004
 FL1; SPECIALTY MORTGAGE CORP., a Nevada corporation.

By his Complaint, Gonzales seeks to enforce the \$10 Million Parcel "A" Transfer Fee against Desert Land and Desert Oasis, asserting that these parties made a qualifying land transfer (exercise of the FLT Option) under the terms of the settlement agreement, which would entitle Gonzales to payment of the Parcel "A" Transfer Fee. In addition to filing a breach of contract action, to enforce payment of the Parcel "A" Transfer Fee Gonzales is seeking to treat his Parcel "A" Transfer Fee right as a lien against the property. Accordingly, Gonzales has named lenders in this action who hold interests against the Parcel "A" properties, and is seeking a declaration of priority and foreclosure against the Parcel "A" properties.

Mr. Gonzales alleges in his litigation that the obligation to pay the Parcel A Transfer Fee has been triggered. He alleges that the payment was triggered by the transfer of an option to Desert Oasis Investments, LLC. Mr. Gonzales also asserts upon information and belief, to be added as amendment to the current complaint, that payment of the Parcel A Transfer Fee also has have been triggered by a prior or existing lease of the property or will be triggered by a pending or contemplated lease.

On February 23, 2011, the Gonzales Action was removed to Bankruptcy Court by Specialty Trust, Inc., a debtor and debtor in possession in its own Chapter 11 case pending in the United States Bankruptcy Court for the District of Nevada as Case No. BK-N-10-51432-GWZ. On May 11, 2011, Judge Zive heard Desert Land's and Desert Oasis Investment's Motion for Withdrawal of Reference Pursuant to 28 U.S.C. §157(d). On June 13, 2011, Judge Zive's Order and Recommendation was entered recommending withdrawal of the Gonzales Action to District Court. The Gonzales Action should now be pending in the United States District Court for the District of Nevada.

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1 Wells Fargo Bank has filed a Motion to Dismiss the Gonzales Action on the grounds that
2 Gonzales, as a matter of law, does not have a lien on Parcel A. Wells Fargo Bank argues:

3 Here, the intentions of the parties are clearly stated. Per the terms of the
4 Settlement Agreement, Plaintiff was solely granted a right to a Parcel "A" Transfer Fee
5 upon a qualifying land transfer associated with the Parcel "A" property. As already
6 noted, the Parcel "A" Transfer Fee clause does not use any words conveying or
7 transferring an actual title interest in the Parcel "A" property. Rather, the clear terms of
8 the Settlement Agreement provide that the Parcel "A" Transfer Fee **"shall not
constitute a mortgage, deed of trust, or other lien on Parcel A"**. *See supra.*
(emphasis added). Because there was no intent by the parties to create a lien, this Court
should not grant Plaintiff's Parcel "A" Transfer Fee any lien consideration.

9 Desert Land, Desert Oasis Investments and the Debtor intend to join in this motion and
10 support this argument. It is expected that the Gonzales Action will result in a determination that
11 Gonzales does not have a lien on the Property of the Debtor.

12 Desert Land, Desert Oasis Investments and the Debtor would also argue that since Gonzales
13 did not obtain a stay pending appeal, the loans made in between the Bankruptcy Court's Order
14 Confirming the Second Amended Plan of Reorganization and the BAP Decision by the BAP Court,
15 are protected by the provisions of Bankruptcy Code §364(e) which provides:

16 (e) The reversal or modification on appeal of an authorization under this section to
17 obtain credit or incur debt, or of a grant under this section of a priority or a lien, does
18 not affect the validity of any debt so incurred, or any priority or lien so granted, to an
19 entity that extended such credit in good faith, whether or not such entity knew of the
pendency of the appeal, unless such authorization and the incurring of such debt, or the
granting of such priority or lien, were stayed pending appeal.

20 Desert Land, Desert Oasis Investments and the Debtor intend to prosecute counterclaims
21 against Gonzales for slander of title and other claims.

22 Pending the outcome of the Gonzales Action, the Debtor does not have clear title to the
23 Property.

24 Gonzales states his contentions with regard to the Gonzales Action as follows:

25 a. Gonzales' complaint does not assert that there is a lien, but seeks a judicial
26 determination to confirm that his rights regarding the Parcel A Transfer Fee constitutes part of
27 a right or an interest given in Parcel A.

28 b. A notice of *lis pendens* was not recorded in regards to Gonzales' litigation.

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c. Pursuant to the terms of Desert Land's confirmed plan, any sale, transfer, or other conveyance of all, or any part of Parcel A (with certain specified exceptions), which occurred concerning any portion of Parcel A, triggers Gonzales' rights in the entirety of Parcel A, including that portion of Parcel A owned by Desert Oasis.

d. Gonzales has asserted the occurrence of a trigger event in his complaint, and, further, Desert Oasis is aware of (1) a lease made on a portion of Parcel A owned by Desert Land, and (2) Desert Oasis is aware that there are other existing and/or future leases to be made upon Desert Land's portion of Parcel A, which Gonzales asserts are, or would be, additional trigger events.

7. Reduction of the Loan Balance

The principal balance of the Loan was, originally, \$5,200,000. The principal balance on the Loan has been substantially reduced since the Loan by principal reduction payments made on the following dates:

August 2, 2006	\$1,025,000
July 30, 2007	340,000
August 11, 2008	250,000
December 4, 2008	235,000
June 1, 2009 to January, 2011	15,000/month

The principal balance now due is approximately \$2,895,322. Interest and fees accrued, pre-petition, were approximately \$247,536. Some of these fees and costs may be disputed.

B. Insiders of the Debtor

In a limited liability company, the equity interest holders are the members. Debtor's insiders as defined in §101(31) of the United States Bankruptcy Code (the "Code") include the members and the manager. The managers of the Debtor are as follows:

David Gaffin	Manager
--------------	---------

The owners of the Debtor are:

Compass Investments, LLC	99.5%
Bruce E. Bulloch	0.5%

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Compass Investments, LLC is managed by Howard Bulloch and David Gaffin.

C. Property Value

The Debtor estimates the Property is worth approximately \$6,500,000 based upon its cash flow as an apartment complex. In addition, the Property is part of an assemblage of adjacent real estate with frontage on Las Vegas Boulevard which could be developed as a hotel/resort/casino. The value of the Property for this purpose may be \$12 million to \$24 million.

D. Management of the Debtor Before and During the Bankruptcy

The person in control of the Debtor is David Gaffin.

E. Events Leading to Chapter 11 Filing

The Loan made to Desert Oasis by J P Morgan Chase Bank was originally due in July, 2006. The parties to the Loan negotiated extensions on August 2, 2006, July 30, 2007, August 11, 2008, December 4, 2008, June 1, 2009 and December 4, 2009. Pursuant to these agreements, the balance of the Loan became due July 10, 2010. Despite good faith attempts by both parties, no further extension of the Loan was negotiated. In November, 2010, the Debtor ceased depositing all its rental income in a lock-box controlled by the Bank. The Debtor did make principal and interest payments through January, 2011. On January 14, 2011, Wells Fargo had a Notice of Default & Election to Sell filed. On April 18, 2011, Wells Fargo had filed and served an notice that a sale under the power of sale contained in the deed of trust would be held on May 11, 2011. On May 10, 2011, the Debtor filed its petition.

F. During the Bankruptcy Case

Since the filing of the debtor's bankruptcy case, the debtor has employed Schwartzer & McPherson Law Firm as its bankruptcy counsel. The fees of Schwartzer & McPherson will be based, generally, on the time spent by counsel.

The Debtor has sought and obtained authority to use the Bank's cash collateral for normal operations and maintenance of the Property. Under the cash collateral order the Debtor is paying the Bank monthly interest at the non-default rate of 6% per annum.

The Debtor has sought and obtained authority to honor pre-petition tenant deposits.

G. Projected Recovery of Avoidable Transfers

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The Debtor does not intend to pursue preference, fraudulent conveyance, or other avoidance actions.

H. Claims Objections

Except to the extent that a claim is already allowed pursuant to a final non-appealable order, the Debtor reserves the right to object to claims. Therefore, even if your claim is allowed for voting purposes, you may not be entitled to a distribution if an objection to your claim is later upheld. The procedures for resolving disputed claims are set forth in Article V of the Plan.

The Debtor does intend to pursue its counterclaim against Tom Gonzales in the action pending in the Gonzales Action.

I. Current and Historical Financial Conditions

The identity and fair market value of the estate's assets are as follow:

Real Property	\$ 6,500,000.00
Counterclaim Against Gonzales	10,000,000.00 ¹¹
Property & Equipment	236,872.56
Monies owed to Debtor	<u>\$ 1,330,369.69</u>
Total Assets	\$ 18,067,242.25

The identity and balance owed of Debtor's debts are as follows:

Wells Fargo Bank	\$ 3,076,716.23
Tenant Security Deposits	\$ 17,215.00
Insider Unsecured Claims	\$ 7,169,734.61
Gonzales Claim	\$10,000,000.00 ¹²
Non-Insider Unsecured Creditors	<u>\$ 27,650.17</u>

11. Disputed and unliquidated.

12. Not yet due or payable and also an obligation of affiliates of the Debtor.

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1	Total Unsecured Claims	\$17,197,384.78
2	Total Debts	<u>\$20,291,316.01</u>
3	Net Equity	<u>\$ (2,224,073.77)</u>

4

5 The Debtor's post-petition operations, as shown by the Monthly Operating Reports filed with

6 the Bankruptcy Court, consist of the rent paid by the Tenants, the operating expenses and costs paid

7 by the Debtor, the interest payments paid by the Debtor to Wells Fargo Bank. No other funds have

8 been received or disbursed since the filing of the petition in this case. The Debtor's operations

9 produce a positive cash flow, before interest, amortization and depreciation of approximately \$34,000

10 per month.

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11 Attached as Exhibit "F", is a schedule showing the cash flow of the apartments for the past 4½

12 years and a projection for the next 10 years. The projections are the Debtor's best estimate of future

13 cash flow based upon its past and current occupancy, rents and expenses. The projections show that

14 the Debtor should have no problem in making the monthly payments required by the Plan.

15 III. SUMMARY OF THE PLAN OF REORGANIZATION AND TREATMENT OF

16 CLAIMS AND EQUITY INTERESTS

17 A. What is the Purpose of the Plan of Reorganization?

18 As required by the Code, the Plan places claims and equity interests in various classes and

19 describes the treatment each class will receive. The Plan also states whether each class of claims or

20 equity interests is impaired or unimpaired. If the Plan is confirmed, your recovery will be limited to

21 the amount provided by the Plan.

22 B. Claims

23 Certain types of claims are automatically entitled to specific treatment under the Code. They

24 are not considered impaired, and holders of such claims do not vote on the Plan. They may, however,

25 object if, in their view, their treatment under the Plan does not comply with that required by the Code.

26 As such, the Plan Proponent has placed these claims in Class 1.

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1. Class 1. *Administrative Expenses and Priority Claims*

Administrative expenses are costs or expenses of administering the Debtor's chapter 11 case which are allowed under § 507(a)(2) of the Code. The Code requires that all administrative expenses be paid on the effective date of the Plan, unless a particular claimant agrees to a different treatment.

Tenant security deposits are entitled to priority under §507(a)(7). The Bankruptcy Court has approved honoring all tenant deposits. Debtor intends to pay Tenant security deposits in the ordinary course of business, that is, when the tenant is entitled to return of his or her security deposit. Priority tax claims are unsecured income, employment, and other taxes described by § 507(a)(8) of the Code. Unless the holder of such a § 507(a)(8) priority tax claim agrees otherwise, it be paid on the effective date of the Plan

The following chart lists the Debtor's estimated administrative expenses, and their proposed treatment under the Plan:

Type	Estimated Amount Owed	Proposed Treatment
Monthly Expenses Arising in the Ordinary Course of Business After the Petition Date	\$50,000	Paid in full on the effective date of the Plan, or according to terms of obligation if later
Professional Fees, as approved by the Court.	\$50,000	Paid in full on the effective date of the Plan (or when approved by the Court) in full from the pre-petition retainer received from Debtor.
Office of the U.S. Trustee Fees	\$1,625	Paid in full on the effective date of the Plan or when due if later.
TOTAL	\$101,625	

The Debtor is unaware of any Priority Tax Claims.

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2. Class 2. Bank Secured Claim

Description	Impairment	Treatment
<p><i>Secured claim of the Bank</i></p> <p>Collateral description : the Property</p> <p>Allowed Secured Amount: \$3,100,000 (estimated)</p> <p>Priority of lien: 1st priority</p>	impaired	<p>Class 2 is impaired by this Plan. The Bank will be paid its pre-petition claim in full, including principal, accrued interest and costs and reasonable attorneys' fees. This amount shall be paid with interest at the rate of 4.5% per annum from the Petition Date. Beginning on 1st day of the 1st month following the Effective Date, the Bank shall be paid an amount necessary to amortize its claim over 25 years together with interest. In addition payments for insurance and real estate taxes will be escrowed. The principal and interest payment would be approximately \$17,250 per month. Payment would be made from the rent collected from the Tenants. The balance of the Claim shall be all due and payable in 10 years from the Effective Date. This balloon payment at the end of 10 years would be approximately \$2,253,000. This balance will be paid from the proceeds of sale or refinancing or from a capital investment made by the owners of the equity interest. There will be no pre-payment penalty. The loan will be assumable. The Bank shall retain its lien on the Property with the same priority as it held on the date of the Debtor's Petition.</p>

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3. Class 3. *Gonzales Claim*

Description	Impairment	Treatment
Class 3 – Tom Gonzales (\$10,000,000)	unimpaired	Class 3 is unimpaired by this Plan. Tom Gonzales will be paid the Parcel A Transfer Fee pursuant to the terms of the Desert Land Plan of Reorganization. That payment is due when, and only when, there is a Parcel A Transfer as defined in that plan. This claim is unsecured. This claim is subject to setoffs and counterclaims by the Debtor.

4. Class 4. *Class of General Unsecured Claims*

General unsecured claims are not secured by property of the estate and are not entitled to priority under § 507(a) of the Code. The following chart identifies the Plan's proposed treatment of Class 4 which contain general unsecured claims against the Debtor:

Description	Impairment	Treatment
Class 4 - General Unsecured Creditors (approximately, \$7,197,000)	impaired	Class 4 is impaired by this Plan. Non-Insider General Unsecured Creditors will be paid in full, without interest from the rent collected from the Tenant. Beginning on 1 st day of the 1 st month following the Effective Date, Class 4 will be paid \$3,000 per month pro rata for approximately 12 months. Desert Land, LLC, Citation Financial, LLC and Compass Investments Holdings, LLC (holding claims of approximately \$7,161,000) have agreed to subordinate their claims to the claims of other unsecured creditors and will be paid only after all other unsecured creditors are paid in full and reasonable reserves for maintenance and repair of the Property have been funded.

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5. Class 5. *Class of Equity Interest Holders*

Equity interest holders are parties who hold an ownership interest (*i.e.*, equity interest) in the Debtor. In a limited liability company ("LLC"), the equity interest holders are the members. The following chart sets forth the Plan's proposed treatment of the one class of equity interest holders:

Description	Impairment	Treatment
Class 5- Equity Security Holders of the Debtor	unimpaired	Class 5 is unimpaired by this Plan. Equity Security Holders (the members of the Debtor) will retain their equity interest in the Debtor.

C. Means of Implementing the Plan

1. *Source of Payments*

Payments and distributions under the Plan will be funded by the rents paid by the ~~Tenants~~ and by sale or refinancing at or before the end of 10 years. The Debtor asserts that there is substantial equity in the Property in excess of the debt to the Bank. In normal times, the Property could easily be refinanced. However, due to the alleged lien of Gonzales and the current economic situation in which there are almost no loans for commercial property in Las Vegas available, ~~makes~~ immediate refinancing unavailable. The Gonzales lien will be eliminated by a final order in the Gonzales Action and, it is reasonable to expect that ~~competition for and availability of commercial~~ lending for apartment complexes will return at some time within the next ten years.

2. *Post-confirmation Management*

The Post-Confirmation Managers of the Debtor shall be David Gaffin, the current manager. The Manager will be compensated from funds in excess of the required payments under this plan. For the foreseeable future, on-site management will be continue to handled by West Corp Management Group.

D. Risk Factors

The proposed Plan has the following risks:

1. *Business Risk*-There is an inherent risk in all real estate in that the value of the property is, in part, dependent on general economic conditions in the community. In the unlikely event

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1 that the value of the property decreases below \$3,100,000 over the next ten years it may be impossible
2 for the Debtor to refinance the Property and pay off the loans as required by the Plan.

3 2. Tenant Risk- There is an inherent risk in that the current level of tenant
4 occupancy and tenant rents, although expected to remain the same in the future, could decline in the
5 future. In the event of a substantial reduction in occupancy or rent levels, the Debtor will not have the
6 ability to make the payments required by the Plan.

7 3. Refinancing Risk-The current market does not provide opportunities for
8 refinancing Las Vegas properties at almost any rate. It is unlikely that this condition will continue.
9 With the elimination of the alleged Gonzales lien and the continued amortization of the Loan, it is
10 more likely than not that refinancing will become available.

11 These long-term risks are shared by the Bank and Equity Security Holders. In the event
12 of the failure of the Debtor to make the payments to the Bank required by the Plan, the Bank would
13 have the right to foreclose on the Property.

14 E. Executory Contracts and Unexpired Leases

15 The Plan lists all executory contracts and unexpired leases that the Debtor will assume under
16 the Plan. Tenant leases will be assumed. Other executory contracts and unexpired leases related to
17 the operation of the Property may be assumed. Assumption means that the Debtor has elected to
18 continue to perform the obligations under such contracts and unexpired leases, and to cure defaults of
19 the type that must be cured under the Code, if any.

20 F. Tax Consequences of Plan

21 *Creditors and Equity Interest Holders Concerned with How the Plan May Affect Their Tax*
22 *Liability Should Consult with Their Own Accountants, Attorneys, And/Or Advisors.*

23 The following are the anticipated tax consequences of the Plan:

24 1. Tax consequences to the Debtor of the Plan:

25 a. Under the Internal Revenue Code, the rent paid by the Tenants is
26 considered income. Interest paid to the Bank is deductible. In addition, depreciation of the Property is
27 deductible. The Debtor expects to incur minimal income.
28

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b. The Debtor is not an income tax-paying entity. The Debtor's income

and/or losses are passed through to its equity holders.

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IV. CONFIRMATION REQUIREMENTS AND PROCEDURES

To be confirmable, the Plan must meet the requirements listed in §§ 1129(a) or (b) of the Code. These include the requirements that: the Plan must be proposed in good faith; at least one impaired class of claims must accept the plan, without counting votes of insiders; the Plan must distribute to each creditor and equity interest holder at least as much as the creditor or equity interest holder would receive in a chapter 7 liquidation case, unless the creditor or equity interest holder votes to accept the Plan; and the Plan must be feasible. These requirements are not the only requirements listed in § 1129, and they are not the only requirements for confirmation.

A. Who May Vote or Object

Any party in interest may object to the confirmation of the Plan if the party believes that the requirements for confirmation are not met.

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Many parties in interest, however, are not entitled to vote to accept or reject the Plan. A creditor or equity interest holder has a right to vote for or against the Plan only if that creditor or equity interest holder has a claim or equity interest that is both (1) allowed or allowed for voting purposes and (2) impaired.

In this case, the Plan Proponent believes that classes 2 and 4 are impaired and that holders of claims and interests in each of these classes are therefore entitled to vote to accept or reject the Plan. The Plan Proponent believes that classes 1, 3 and 5 are unimpaired and that holders of claims in each of these classes, therefore, do not have the right to vote to accept or reject the Plan.

1. *What Is an Allowed Claim or an Allowed Equity Interest?*

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Only a creditor or equity interest holder with an allowed claim or an allowed equity interest has the right to vote on the Plan. Generally, a claim or equity interest is allowed if either (1) the Debtor has scheduled the claim on the Debtor's schedules, unless the claim has been scheduled as disputed, contingent, or unliquidated, or (2) the creditor has filed a proof of claim or equity interest, unless an objection has been filed to such proof of claim or equity interest. When a claim or equity interest is not allowed, the creditor or equity interest holder holding the claim or equity interest cannot

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1 vote unless the Court, after notice and hearing, either overrules the objection or allows the claim or
 2 equity interest for voting purposes pursuant to Rule 3018(a) of the Federal Rules of
 3 Bankruptcy
 4 Procedure.

5 *The deadline for filing a proof of claim in this case is August 9, 2011 (for non-*
 6 *governmental creditors) and November 8, 2011 (for government units).*

7 2. *What Is an Impaired Claim or Impaired Equity Interest?*

8 As noted above, the holder of an allowed claim or equity interest has the right to vote
 9 only if it is in a class that is *impaired* under the Plan. As provided in § 1124 of the Code, a class is
 10 considered impaired if the Plan alters the legal, equitable, or contractual rights of the members of that
 11 class.

12 3. *Who is Not Entitled to Vote*

13 The holders of the following five types of claims and equity interests are *not* entitled to
 14 vote:

- 15 • holders of claims and equity interests that have been disallowed by an order of the
- 16 Court;
- 17 • holders of other claims or equity interests that are not “allowed claims” or “allowed
- 18 equity interests” (as discussed above), unless they have been “allowed” for voting
- 19 purposes.
- 20 • holders of claims or equity interests in unimpaired classes;
- 21 • tenants because they are holders of claims entitled to priority pursuant to §§ 507(a)(2),
- 22 (a)(3), and (a)(8) of the Code; and
- 23 • administrative expenses.

24 *Even If You Are Not Entitled to Vote on the Plan, You Have a Right to Object to the Confirmation*
 25 *of the Plan.*

26 B. **Votes Necessary to Confirm the Plan**

27 If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one impaired
 28 class of creditors has accepted the Plan without counting the votes of any insiders within that class,

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1 and (2) all impaired classes have voted to accept the Plan, unless the Plan is eligible to be confirmed
2 by “cram down” on non-accepting classes, as discussed later in Section [B.2].

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3 1. *Votes Necessary for a Class to Accept the Plan*

4 A class of claims accepts the Plan if both of the following occur: (1) the holders of
5 more than one-half (1/2) of the allowed claims in the class, who vote, cast their votes to accept the
6 Plan, and (2) the holders of at least two-thirds (2/3) in dollar amount of the allowed claims in the
7 class, who vote, cast their votes to accept the Plan.

8 A class of equity interests accepts the Plan if the holders of at least two-thirds (2/3) in amount
9 of the allowed equity interests in the class, who vote, cast their votes to accept the Plan.

10 2. *Treatment of Nonaccepting Classes*

11 Even if one or more impaired classes reject the Plan, the Court may nonetheless
12 confirm the Plan if the nonaccepting classes are treated in the manner prescribed by § 1129(b) of the
13 Code. A plan that binds nonaccepting classes is commonly referred to as a “cram down” plan. The
14 Code allows the Plan to bind nonaccepting classes of claims or equity interests if it meets all the
15 requirements for consensual confirmation except the voting requirements of § 1129(a)(8) of the Code,
16 does not “discriminate unfairly,” and is “fair and equitable” toward each impaired class that has not
17 voted to accept the Plan.

18 *You should consult your own attorney if a “cramdown” confirmation will affect your*
19 *claim or equity interest, as the variations on this general rule are numerous and complex.*

20 C. **Liquidation Analysis**

21 To confirm the Plan, the Court must find that all creditors and equity interest holders who do
22 not accept the Plan will receive at least as much under the Plan as such claim and equity interest
23 holders would receive in a chapter 7 liquidation. A liquidation analysis is attached to this Disclosure
24 Statement as **Exhibit “B.”**

25 In a liquidation, the Property would be foreclosed upon by the Bank, the successful bidder at
26 the foreclosure sale would obtain title to the Property free and clear of subordinate liens and, possibly,
27 the Lease. Gonzales and other the unsecured creditors would receive a dividend of approximately
28 12%. Members of the Debtor would receive nothing.

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Deleted 29% of their claims

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D. Feasibility

The Court must find that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor to the Debtor, unless such liquidation or reorganization is proposed in the Plan.

1. Ability to Initially Fund Plan

The Plan Proponent believes that the Debtor will have enough cash on hand on the effective date of the Plan to pay all the claims and expenses that are entitled to be paid on that date. If necessary, the members of the Debtor will contribute the funds necessary to pay Administrative Claims and Priority Claims. The retainer received by Debtor's counsel should be sufficient to pay Debtor's counsel's fees and costs.

2. Ability to Make Future Plan Payments And Operate Without Further Reorganization

The Plan Proponent must also show that it will have enough cash over the life of the Plan to make the required Plan payments. In this case, existing monthly rent payments are more than sufficient to fund the monthly payments required by the Plan. A schedule of the Debtor's past cash flow and projected cash flow is attached as Exhibit "F". These projections show that based on past cash flow the projected cash flow will be more than sufficient to make the payments required by the Plan.

The Gonzales claim is for the Parcel "A" Transfer Fee as described in the Order Confirming the Desert Land Confirmation Order and section II.A above. This claim is due when a portion of Parcel "A" is sold. The obligation for the Parcel "A" Transfer Fee is shared with Desert Land, LLC. Desert Land owns 7 adjacent parcels of land worth \$30,000,000 to \$60,000,000. At this time, none of this land is subject to secured debt. Desert Land would likely be able to sell land or obtain financing to pay the Gonzales claim.

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1 3. Confirmation Requirements

2 The Plan is Fair and Equitable to the Bank

3 The Plan satisfies the first test in § 1129(b)(2)(A). Under the Plan, the Bank retains its lien.

4 The Bank has objected to the Plan being Fair and Equitable because the Gonzales lien question is not
5 decided prior to confirmation. That is not a requirement of the statute. Bankruptcy Code
6 §1129(b)(2)(A)(i)(I) only requires that the "creditor retains the lien securing its claim". The statute
7 does not require a debtor to guarantee, improve or increase the priority of a creditor's lien. Both the
8 Debtor and the Bank agree that Gonzales' alleged lien must be inferior to the Bank's lien because (a)
9 Gonzales has no right to a lien and (b) because the Bank's lien was given pursuant to an order of the
10 bankruptcy court and (i) the appeal from that order was taken and (ii) no stay pending appeal was
11 granted. See Bankruptcy Code §364(e).

12 The Bank Will Receive The Indubitable Equivalent Of Its Claim

13 The Bank is entitled to the indubitable equivalent of its claim. 11 U.S.C. § 361(3). That can be
14 provided by interest being paid on the claim. The Plan provides the Bank with a stream of monthly
15 payments as required by subsection II of §1129(b)(2)(A)(ii). The "value" of the stream of payments
16 requires payment of an appropriate rate of interest, considering the terms, quality of the security and
17 any risk to be borne by the affected creditor.

18 U.S. government interest rates are lower--actually much lower than just a few weeks ago. The 10-year
19 Treasury Note is now hovering at just under 2.5 % [2.40% as of August 8, 2011]. 2.5% is today's so-called "riskless
20 rate." The proposed rate of 4.5% is a full 2% greater than the return possible from investing in similar maturity
21 Treasury bonds. Percentage-wise, that is 80% higher interest rate in a situation where the Bank has minimal risk of
22 default and there are no marketing costs. The Debtor asserts that 80% higher return is a sufficient risk premium for a
23 92%-95% occupied apartment building with 127 units and therefore over a 100 diversified sources of revenues for
24 repayment.

25 **V. EFFECT OF CONFIRMATION OF PLAN**

26 **A. Discharge**

27 On the effective date of the Plan, the Debtor shall be discharged from any debt that arose
28 before confirmation of the Plan, subject to the occurrence of the effective date, to the extent specified

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in § 1141(d)(1)(A) of the Code, except that the Debtor shall not be discharged of any debt (i) imposed by the Plan, (ii) of a kind specified in § 1141(d)(6)(A) if a timely complaint was filed in accordance with Rule 4007(c) of the Federal Rules of Bankruptcy Procedure, or (iii) of a kind specified in § 1141(d)(6)(B). After the effective date of the Plan your claims against the Debtor will be limited to the debts described in clauses (i) through (iii) of the preceding sentence.

B. Modification of Plan

The Plan Proponent may modify the Plan at any time before confirmation of the Plan. However, the Court may require a new disclosure statement and/or re-voting on the Plan.

C. Final Decree

Once the estate has been fully administered, as provided in Rule 3022 of the Federal Rules of Bankruptcy Procedure, the Plan Proponent, or such other party as the Court shall designate in the Plan Confirmation Order, shall file a motion with the Court to obtain a final decree to close the case. The Debtor intends to file a motion for a final decree as soon as it begins making the payments to the secured and unsecured creditors under the Plan. Alternatively, the Court may enter such a final decree on its own motion.

Respectfully submitted,

DESERT OASIS APARTMENTS, LLC

By: _____
David Gaffin, Manager

The Plan Proponent

Prepared by:

SCHWARTZER & McPHERSON LAW FIRM

By: _____
Lenard E. Schwartzer, Esq.
*Counsel for the Debtor and Debtor in Possession
And Plan Proponent*

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EXHIBITS

Exhibit A – Proposed Plan of Reorganization

Exhibit B – Liquidation Analysis

Exhibit C – Confirmation Order

Exhibit D – BAP Decision

Exhibit E – 9th Circuit Decision

Exhibit F – Cash Flow History and Projections

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SCHWARTZ & MCPHERSON LAW FIRM

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Las Vegas, Nevada 89146-5308
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Exhibit A
Copy of Proposed Plan of Reorganization

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Exhibit B
Liquidation Analysis

***Plan Proponent's Estimated Liquidation Value
of Assets (foreclosure by the Bank)***

Assets

a. Cash on hand \$ 100,000
b. Real Property (based upon Appraisal by RCS Appraisal, Inc.) less 10% discount for foreclosure or Chapter 7 bankruptcy sale¹ \$ 5,400,000

Total Assets at Liquidation Value

\$ 5,500,000

Less:

Costs of Sale (estimated at 10% of sales price) \$ 54,000

Less:

Secured Claim of Bank (\$3,100,000) \$ 3,100,000

Less:

Chapter 7 trustee fees and expenses \$ 150,000

Less:

Chapter 11 administrative expenses (not previously paid by retainer) \$ 0

Less:

Priority claims, excluding administrative expense claims \$ 0

Balance for unsecured claims

2,196,000

***Percentage of Claims Which Unsecured Creditors²
Would Receive Or Retain in a Chapter 7 Liquidation:***

13%

***Percentage of Claims Which Non-Insider Unsecured
Creditors Will Receive or Retain under the Plan:***

100%

¹ The RCS Appraisal, Inc market value of \$6,000,000 requires an exposure period of approximately 12 months.

² Includes \$10,000,000 claim of Gonzales which would be due upon sale of the Property and \$7,197,000 claims of insiders which will be subordinated under the Plan.

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Exhibit C

CONFIRMATION ORDER IN DESERT LAND CASE

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Exhibit D
BAP DECISION

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Exhibit E
9th CIRCUIT DECISION

SCHWARTZ & MCPHERSON LAW FIRM

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Las Vegas, Nevada 89146-5508
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Exhibit F

Cash Flow History and Projections

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EXHIBIT “3”

Desert Oasis Apartments LLC		2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Total Cash Flow/Projection																
Cash & B/S-11-17-2014-AM																
Physical Occupancy %		93.4%	86.9%	80.3%	91.9%	95.6%	96.0%	95.0%	95.0%	96.0%	96.0%	95.0%	96.0%	95.0%	94.0%	95.0%
Rental Income		1,162,755	1,151,500	1,180,900	980,000	997,520	1,050,240	1,065,500	1,080,960	1,096,320	1,111,560	1,127,040	1,142,400	1,157,760	1,173,120	1,188,480
Market Rent		(279)	1,556	(46,215)	60,156	51,117	(1,500)	(1,500)	(1,500)	(1,500)	(1,500)	(1,500)	(1,500)	(1,499)	(1,498)	(1,497)
Gain (Loss) To Lease																
Total Gross Potential Rent		1,162,476	1,153,056	1,134,685	1,040,156	1,029,637	1,048,740	1,064,000	1,079,460	1,094,820	1,110,180	1,125,540	1,140,900	1,156,261	1,171,622	1,186,983
Physical Vacancy Loss		(77,090)	(175,631)	(223,483)	(84,475)	(45,114)	(41,550)	(53,205)	(53,873)	(43,703)	(44,407)	(55,277)	(45,636)	(57,813)	(70,297)	(59,349)
Bad Debt - Skips and Evicts		(16,110)	(4,594)	(12,284)	(7,602)	(8,075)	(6,000)	(6,500)	(6,500)	(6,000)	(9,000)	(8,000)	(8,000)	(8,000)	(8,000)	(8,000)
Less Bad Debt Collected		4,045	2,705	1,000	684	1,439	1,500	1,500	1,000	1,500	1,750	1,000	1,500	1,500	1,500	1,500
Month To Month Fees		-	-	(8,525)	(6,850)	(6,385)	(5,480)	(6,600)	(6,720)	(6,840)	(6,960)	(7,080)	(7,200)	(7,320)	(7,440)	(7,560)
Non Revenue Units - Models		(23,219)	(12,065)	(27,725)	(29,101)	(23,280)	(20,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)
Concessions - MIA			(1)	(1)		(320)			(800)		(900)	(950)	(1,000)	(1,000)	(1,000)	(1,000)
Rent Discounts		24,403	(21,600)	-	12,131	12,131	(2,000)	(780)		(850)						
Prepaid/Delinquent		1,074,505	951,910	863,464	909,753	956,659	971,810	993,515	999,467	1,021,837	1,035,663	1,037,733	1,065,564	1,068,828	1,071,385	1,097,574
Total Rental Income		28,665	24,767	31,025	30,245	26,700	28,500	29,500	29,700	29,900	30,100	30,300	30,500	30,700	30,900	31,100
Resident Related Income		28,794	24,480	16,025	24,955	23,284	23,500	24,500	24,800	25,000	25,100	25,300	25,500	25,700	25,900	26,100
Ancillary Income		28,858	24,212	22,260	25,603	26,283	26,500	26,500	25,800	26,000	26,200	26,400	26,600	26,800	27,000	27,200
Utility Reimbursements																
Total Revenue		1,160,822	1,021,369	932,789	990,556	1,034,886	1,050,310	1,063,115	1,075,567	1,102,637	1,117,063	1,119,733	1,146,164	1,151,828	1,155,185	1,181,974
Operating Expenses																
Management Fee		39,254	39,168	36,000	36,000	33,001	36,000	36,000	36,000	36,000	36,000	36,000	36,000	36,000	36,000	36,000
Administrative Expenses		59,950	47,713	41,809	49,038	40,923	42,500	43,000	44,500	47,550	46,500	47,540	42,500	42,500	42,500	42,500
Payroll and Benefits		127,185	193,135	212,667	229,964	232,639	237,000	242,000	247,000	252,000	257,000	262,000	267,000	272,000	277,000	282,000
Maintenance Expenses		119,725	101,217	90,334	69,970	60,867	70,000	75,000	80,000	85,000	82,000	80,000	83,500	83,500	83,500	83,500
Utilities		77,702	67,142	75,782	70,240	72,136	72,500	73,500	74,500	75,500	76,500	77,500	78,500	79,500	80,500	81,500
Total Operating Expenses		423,516	448,375	456,892	455,212	439,566	458,000	471,500	482,000	496,050	498,000	503,040	507,500	513,501	519,502	525,503
Taxes		81,305	86,305	94,305	94,080	103,702	95,000	98,000	98,000	94,000	93,500	91,500	92,541	92,541	92,541	92,541
Insurance		15,860	18,653	19,519	19,987	21,817	19,900	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000
Total Expenses		520,581	553,333	570,716	569,279	565,085	572,900	587,500	600,000	610,050	611,500	614,540	620,041	626,042	632,043	638,044
Total Net Operating Income		639,841	468,036	362,073	421,277	469,801	477,410	475,615	475,567	492,587	505,563	505,193	528,133	525,286	523,142	543,930
Capital Improvements		52,888	64,178	223,027	48,299	51,478	50,000	65,000	45,000	47,500	50,000	52,850	50,410	50,410	50,410	50,410
Non-Recurring Costs		153	17,930	37,069	18,128	(18,185)	16,000	16,000	15,000	14,000	14,000	14,000	15,000	15,000	15,000	15,000
Total Cash Flow Before Debt Service		586,800	385,926	101,977	354,850	436,508	411,410	394,615	415,567	433,087	441,563	438,343	462,713	460,376	457,732	478,520
Debt Service		343,438	254,593	172,931	184,190	219,000	219,000	219,000	219,000	219,000	219,000	219,000	219,000	219,000	219,000	219,000
Unsecured Creditor Payment		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Net Cash Flow		243,362	131,335	(70,954)	170,660	217,508	156,410	139,615	150,667	175,087	186,563	183,343	207,713	205,376	202,732	223,520
Partnership Expenses		-	5,900	539	-	-	-	-	-	-	-	-	-	-	-	-
Total Net Income		243,362	125,435	(71,493)	170,660	217,508	156,410	139,615	150,667	175,087	186,563	183,343	207,713	205,376	202,732	223,520

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EXHIBIT “4”

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6 Lenard E. Schwartz, Esq.
Nevada Bar No. 0399
7 Schwartz & McPherson Law Firm
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10 Email: bkfilings@s-mlaw.com
11 *Attorneys for Debtor and Debtor In Possession*

12 **UNITED STATES BANKRUPTCY COURT**

13 **DISTRICT OF NEVADA**

14 In re

15 **DESERT OASIS APARTMENTS, LLC,**

16 Debtor.

Case No. BK-S-11-17208-BAM
Chapter 11

Hearing Date: August 23, 2011
Hearing Time: 10:00 a.m.

17
18 **ORDER: (1) APPROVING ADEQUACY OF DISCLOSURES IN PROPOSED**
19 **DISCLOSURE STATEMENT AND (2) SETTING A CONFIRMATION HEARING AND**
20 **DEADLINES FOR BALLOTING AND OPPOSITIONS TO CONFIRMATION**

21 The Motion For Order: (1) Approving Adequacy Of Disclosures In Proposed Disclosure
22 Statement, And (2) Setting a Confirmation Hearing, Record Date and Deadlines For Balloting
23 And Opposition to Confirmation (the "Motion") having come before this court after notice as
24 required by law; Debtor Desert Oasis Apartments, LLC appearing by and through its counsel
25 Lenard E. Schwartz, Esq. of the Schwartz & McPherson Law Firm, other appearances having
26 been noted on the record; the Court having considered the papers on file and the arguments made
27 by counsel, the Amended Plan of Reorganization [Docket No. __] (the "Plan") and the
28 Disclosure Statement to Amended Plan of Reorganization [Docket No. __] (the "Disclosure

Statement") and making its findings on the record, it is

ORDERED as followed:

- a. the Disclosure Statement is approved;
- b. the confirmation hearing is set for _____ at _____;
- c. a ballot substantially in the form of Official Form No. 14 is authorized;
- d. a copy of the Disclosure Statement (together with the Plan attached thereto), a ballot, this Order and a Notice of Hearing shall be mailed to all creditors within 10 days from the entry of this order;
- e. the deadline for filing objections to confirmation shall be _____ (21 days before the Confirmation Hearing);
- f. the deadline for filing of ballots shall be _____ (14 days before the Confirmation Hearing);
- g. the deadline for filing a reply memorandum in support of confirmation shall be _____ (7 days before the Confirmation Hearing); and
- h. the deadline for filing the ballot summary shall be _____ (7 days before the Confirmation Hearing);
- i. the record date for claims and equity interests is the date of the hearing of this motion: August 23, 2011.

Prepared by:

Approved/Disapproved

/s/ Lenard E. Schwartzer
Lenard E. Schwartzer, Esq.
SCHWARTZER & MCPHERSON LAW FIRM
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Attorneys for CT Investment Management Co., LLC in its capacity as Special Servicer to Wells Fargo Bank, N.A.

1 Approved/Disapproved

2
3 _____
4 Louis M. Bubala III, Esq.
5 ARMSTRONG TEASDALE LLP
6 50 West Liberty Street, Suite 950
7 Reno, NV 89501
8 *Counsel for Tom Gonzales*

9 In accordance with LR 9021, counsel submitting this document certifies that the order accurately
10 reflects the court's ruling and that:

11 _____ The court has waived the requirement set forth in LR 9021 (b)(1).

12 _____ No party appeared at the hearing or filed an objection to the motion.

13 X I have delivered a copy of this proposed order to all counsel who appeared at the hearing,
14 and any unrepresented parties who appeared at the hearing, and each has approved or
15 disapproved the order, or failed to respond, as indicated above.

16 _____ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order
17 with the motion pursuant to LR 9014(g), and that no party has objected to the form or
18 content of the order.

19 ###